

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

ANGIE WOOD,

Defendant.

OPINION AND ORDER

08-cv-31-bbc

Plaintiff Shaheed Madyun is proceeding on two claims against defendant Angie Wood: (1) she put plaintiff in segregation in retaliation for his activities as a jailhouse lawyer and because of his complaints about prison conditions; and (2) she failed to obtain medical care for plaintiff after learning he had ingested pieces of razor blades that had been hidden in a piece of pie. Defendant has moved for summary judgment on both claims on the ground that plaintiff failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a). Defendant has the burden to prove that plaintiff failed to comply with § 1997e(a). Jones v. Bock, – U.S. –, 127 S. Ct. 910 (2007).

With respect to plaintiff's retaliation claim, defendant says that plaintiff never filed a grievance on that issue. With respect to his medical care claim, defendant acknowledges

that plaintiff filed multiple grievances that defendant had failed to provide him with medical care, but these grievances were rejected as untimely or because they contained multiple issues.

It is not an easy task to identify plaintiff's arguments in response to defendant's motion because he has filed a joint brief that purports to relate to each of the six motions for summary judgment that are pending in each of his six different cases. (These cases were originally filed under one complaint, but I was required to sever them in accordance with Fed. R. Civ. P. 20. George v. Smith, 507 F.3d 605 (7th Cir. 2007).) Recognizing belatedly that his materials were cumbersome and disorganized, plaintiff has filed motions to delay a ruling on a summary judgment, dkt. #39 and to allow him to rewrite his brief, dkt. #36. Plaintiff filed identical motions in Madyun v. Kuster, 08-cv-32-bbc. The motions plaintiff filed in this case will be denied for the reasons explained in the May 21 opinion and order in Case No. 08-cv-32-bbc. (Plaintiff has filed a third motion seeking consideration of additional exhibits. Dkt. #37. That motion will be granted for the reasons I granted the same motion in Case No. 08-cv-32-bbc.)

From a careful review of plaintiff's submissions, I can discern that plaintiff believes that defendant's motion should be denied for the following reasons:

(1) he filed complaints in 2002 regarding "Angie Woods and the razors in his food, and the conspiracy to put him in segregation in retaliation for being a litigator"; when these

grievances were rejected, plaintiff was prevented from filing an appeal because the grievance examiner failed to assign a file number to the grievance;

(2) he filed a new complaint in 2006; although this complaint was rejected as untimely, this court should overrule that determination because prison officials had prevented him from filing timely complaints in 2002; and

(3) the inmate complaint review system does not provide monetary relief, which means that he did not have an available remedy under 42 U.S.C. § 1997e(a).

None of plaintiff's arguments has merit. To begin with, plaintiff's 2002 grievances have no bearing on this case. In Madyun v. Lemon, 04-cv-343-WCG (E.D. Wis.), plaintiff raised the same claims against defendant that he has in this case regarding her alleged retaliation and failure to help him after he ingested pieces of razor blades. In an order dated March 30, 2005, Judge Griesbach dismissed plaintiff's claims against Wood for his failure to exhaust his administrative remedies, dkt. #72, at 11-12, and the court of appeals affirmed that decision. Madyun v. Cook, 204 Fed. Appx. 547, 548 2006 WL 2053466 (7th Cir. 2006). Those determinations cannot be relitigated in this case, even in plaintiff believes the court made a mistake. Meyer v. Rigdon, 36 F.3d 1375, 1379 (7th Cir. 1994) (issue preclusion applies when same party lost on same issue in previous case).

In one of his multiple supplements to his brief, dkt. #27, plaintiff argues that Judge Griesbach's decision has no effect on this case because the case in the Eastern District was

dismissed “because [plaintiff] misidentified his exhibits.” This a brazen misrepresentation of Judge Griesbach’s decision, which painstakingly considered each of the documents that plaintiff submitted to show administrative exhaustion. At the conclusion of this discussion, the court stated that plaintiff “fails to place in dispute defendants’ evidence that he failed to properly exhaust his administrative remedies.” Madyun v. Lemon, No. 04-C-343 (E.D. Wis. Mar. 30, 2005). Thus, the only question before this court with respect to plaintiff’s claims is whether he exhausted his administrative remedies sometime after he filed Case No. 04-C-343 in 2004. I conclude he did not.

With respect to his retaliation claim, the grievances submitted by defendant show that plaintiff did not file a grievance in 2004 or later relating to defendant’s placement of plaintiff in segregation in 2001. Further, plaintiff concedes that the grievance he filed after 2004 relating to Wood’s involvement in the razor blade incident was rejected as untimely. Dkt. #14, exh. XX. The Supreme Court has held that when a prisoner’s grievance is rejected for failing to meet an administrative deadline, the prisoner has not exhausted his administrative remedies as required by 42 U.S.C. § 1997e(a). Woodford v. Ngo, – U.S. – , 126 S. Ct. 2378 (2006)(2006); see also Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). Plaintiff argues that it is not his fault because defendants prevented him completing the grievance process in 2002, but this is just another attempt to avoid Judge Griesbach’s ruling.

Plaintiff's only other argument is that exhaustion is not required for his claim because he is seeking money damages, a form of relief not provided through the grievance process. Unfortunately for plaintiff, this argument was rejected long ago by the Supreme Court. Booth v. Churner, 532 U.S. 731 (2001) (prisoners must complete grievance process even when it does not provide money damages). Because defendants have shown that plaintiff failed to exhaust his administrative remedies, the case must be dismissed.

ORDER

IT IS ORDERED that

1. Plaintiff Shaheed Madyun's motion to delay ruling on summary judgment, dkt. #39, and to allow him to refile his brief, dkt. #36, are DENIED.
2. Plaintiff's motion to submit additional exhibits, dkt. #37, is GRANTED.
3. The motion for summary judgment filed by defendant Angie Wood, dkt. #9, is GRANTED. Plaintiff's complaint is DISMISSED without prejudice for his failure to exhaust his administrative remedies.
4. Plaintiff's motion for a preliminary injunction, dkt. #19, is DENIED as moot.

5. The clerk of court is directed to close the case.

Entered this 21st day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge